

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANE SIMKINS, KRISTI SIMKINS,
PATRIC ROGERS, CHRISTER
PERSSON,

Plaintiffs,

v.

NEW YORK LIFE INSURANCE
COMPANY, and ILLUMIFIN
CORPORATION,

Defendants.

CASE NO. 2:23-cv-578

ORDER

Before the Court is Plaintiffs Diane Simkins, Kristi Simkins, Patric Rogers, and Christer Persson’s (collectively, “Plaintiffs”) motion to compel. Dkt. No. 61. The Court heard oral argument on July 2, 2024. Dkt. No. 105. After reviewing the parties’ briefing, the relevant record, and hearing argument, the Court GRANTS in part, and DENIES in part, Plaintiffs’ motion as set forth below.

Plaintiffs accuse Defendant New York Life Insurance (“New York Life”) of “openly violat[ing] the [discovery] rules” to the point of the “absurd.” Dkt. No. 61 at 3. They seek broad relief, acknowledging that the remedies sought are “not typical.” *Id.* New York Life says that it’s played by the rules and that Plaintiffs’ motion

1 contains “numerous misstatements, mischaracterizations, and falsehoods[.]” Dkt.
2 No. 64 at 2. As is typical in discovery disputes, the truth is somewhere in between.

3 Parties may obtain discovery regarding any non-privileged matter relevant to
4 any claim or defense and proportional to the needs of the case. Fed. R. Civ. P.
5 26(b)(1). Information need not be admissible at trial to be discoverable. *Id.* Under
6 LCR 37(a)(1), parties must certify that they have met and conferred before bringing
7 a motion compel, specifying the “date, manner, and participants to the conference.”

8 Plaintiffs certify that they met and conferred with New York Life before filing
9 this motion, but New York Life argues Plaintiffs failed to satisfy the LCR 37(a)(1)
10 standard. Even when a certification is included, “[c]ourts may look beyond the
11 certification to determine whether a sufficient meet-and-confer took place.” *Selim v.*
12 *Fivos, Inc.*, No. C22-1227-JCC, 2023 WL 3172467, at *2 (W.D. Wash. May 1, 2023)
13 (citing *Cardoza v. Bloomin’ Bands, Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015)).
14 “A good faith effort to resolve discovery disputes requires an exchange of
15 information until no additional progress is possible.” *Beasley v. State Farm Mut.*
16 *Auto. Ins. Co.*, C13-1106-RSL, 2014 WL 1268709, at *1 (W.D. Wash. Mar. 25, 2014).

17 Plaintiffs filed this motion 24 hours after meeting and conferring with New
18 York Life, but some of the issues raised have been discussed for months without
19 resolution. During the parties’ February 7, 2024, conference, New York Life
20 proposed several compromises, but Plaintiffs rejected them. Dkt. No. 65 ¶¶ 2-3.
21 During the pendency of this motion, the parties remained dug in on their relative
22 positions. On this record, the Court is satisfied that the parties have hit an impasse
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1 after meeting and conferring in good faith, and that judicial intervention is
2 required. The Court will thus consider the merits of Plaintiffs' motion.

3 In its briefing and at oral argument, New York Life reiterated several of the
4 proposals it had made during its last meet and confer with Plaintiffs. The Court
5 finds that these are fair compromises to some of the issues raised in Plaintiffs'
6 motion and orders as follows:

- 7 1. New York Life must also produce a privilege log, if it has not done so
8 already, identifying any documents it has withheld on privilege
9 grounds. Any privilege log must identify and describe the documents
10 withheld in sufficient detail to enable the demanding party "to assess
11 the claim" of privilege or protection. Fed. R. Civ. P. 26(b)(5)(A)(ii).
- 12 2. New York Life must certify its responses to Plaintiffs' requests for
13 production in the fashion prescribed by Federal Rule of Civil
14 Procedure 26(g)(1)(A). The certification must verify the signer's
15 knowledge and belief *formed after a reasonable inquiry* that the
16 production is *correct and complete*. This certification must also
17 satisfy Federal Rule of Civil Procedure 26(g)(1)(B), which is typically
18 required of discovery responses.

19 As for non-party witness Michael Flanigan, he has an individual obligation to
20 produce documents in response to Plaintiffs' Rule 45 subpoena. To be sure, many of
21 the same or similar documents may be obtained indirectly through discovery
22 requests to New York Life given that Flanigan is a former New York Life insurance
23 agent. But defendants do not get to choose which discovery devices a plaintiff can


1 employ, and in this case, Plaintiffs have served Flanigan with a subpoena—the only
2 method by which discovery may be obtained directly from a third party. Flanigan—
3 not New York Life—must respond to the subpoena with any responsive documents
4 in his possession, custody, or control. The Court will not hold Flanigan in contempt
5 at this time but will revisit the subject as necessary if he still fails to respond
6 personally.

7 Plaintiffs also decry New York Life’s use of so-called “boilerplate” objections.
8 Many of New York Life’s objections lack specificity, but they are not so lacking as to
9 be deemed no objection at all. New York Life must, however, state whether *any*
10 responsive materials are being withheld on the basis of objection or privilege. When
11 an objection applies only to a portion of the documents requested, the responding
12 party must identify the materials being withheld and produce the remainder. *See*
13 Fed. R. Civ. P. 34(b)(2)(C).

14 Similarly, Plaintiffs accuse New York Life of obstructionist conduct during
15 depositions. Plaintiffs attach seven *complete* deposition transcripts to make this
16 point, but “[j]udges are not like pigs, hunting for truffles buried in briefs’ or the
17 record.” *Equal Emp. Opportunity Comm’n v. Telecare Mental Health Servs. of*
18 *Washington, Inc.*, No. 2:21-CV-01339-BJR, 2023 WL 5348880, at *4 (W.D. Wash.
19 Aug. 21, 2023) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).
20 The Court is not inclined to sift through hundreds of pages of deposition transcripts
21 looking for misplaced objections, and the few exchanges that Plaintiffs highlight as
22 particularly objectionable do not show a Rules violation or an utter lack of
23 professionalism or decorum on the part of New York Life’s counsel.

1 Plaintiffs' motion to compel is DENIED in all other respects. Because New
2 York Life was substantially justified in opposing the motion, the Court will not
3 impose fees.

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5 Dated this 9th day of July, 2024.

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8 Jamal N. Whitehead
9 United States District Judge
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